stop because the proceedings had taken a turn he did not like.

In *Catesby* v. *Burnett*,[6] a general meeting of a company was called for the transaction of ordinary business, but owing to considerable opposition among the members present the meeting was adjourned, the only item of business transacted being the appointment of a committee of five shareholders to investigate the affairs of the company. At the adjourned meeting there was much hostility towards the chairman (the defendant) who left the meeting when only the appointment of the auditors had been approved. Those remaining thereupon continued the business of the meeting and elected two directors in the places of those who should have retired. The proceedings, after the chairman had left the meeting, were in certain respects irregular, but in the events that had happened it was held that the two retiring directors, one of whom was the defendant, ceased to be directors, on the date of the adjournment, and that the appointment of the two new directors was valid.

On the strength of these authorities we would hold that the Special General Meeting which the remaining members continued after the President left it on October 30, 1977 was a valid meeting.

Were the resolutions or any of them valid?

The first item on the agenda at this continued meeting was to decide upon the site for the electrical sub-station.

It is not at all clear whether a resolution on the sub-station had been taken by the Building Sub-committee appointed by the Committee, but it would appear from plaintiffs' version of the Minutes of that fateful meeting (before adjournment) that the Sub-committee had recommended that the sub-station be sited within one of the shophouses and that the recommendation was adopted by the General Meeting on February 18, 1973.

Be that as it may, it seems to us consonant with the practice of meetings that the later Special General Meeting being of like status can revoke former decisions made at either a previous Annual General Meeting so that Resolutions 1 and 2 are valid. Nor can we find any lack of power in a Special General Meeting to make a resolution indicating its dissatisfaction with the general performance of the existing committee. We therefore find that Resolution 3 is also valid.

We should add that a vote of no confidence, as a mere expression of loss of faith in the ability of the existing Committee to perform its functions satisfactorily cannot affect our decision on the fourth resolution. Here we agree with counsel for the respondents that Articles 11(b) should be read in conjunction with Articles 28 and 30 (*supra*).

Indeed, if the Special General Meeting wished to proceed with their intention of removing the Committee they would have to obtain the votes of 2/3 of the members present to an amendment to the rules, in accordance with Article 38 enabling a Special General Meeting to remove all or any particular member of an incumbent Committee and to appoint replacement or replacements thereto and submit such amended rules to the Registrar of Societies under section 11(1) & (2) of the Societies Act, wait out the statutory period (3 months), call another Special General Meeting and then carry out their original intentions.

Nothing short of that will make the resolution valid.

To sum up, we would with the deepest respect disagree with the finding of the learned judge in respect of the first three resolutions, but find that his decision on the fourth resolution to be correct. This was sufficient for him to make the declaration and grant the injunction. As the term of office of the Committee has now expired the granting of that injunction would only be of academic interest. We therefore discharge the injunction. Respondents are however entitled to a declaration that the fourth resolution made at the Special General Meeting i.e. "That this Meeting amend Item 4 of the Agenda and elect 11 fresh Committee members for a term of 3 clear months from this date, with the power, duties and responsibilities of a normal Committee to look after the affairs of the Association and to prepare for the amendment of the Constitution and to prepare and call for a new election to elect new office bearers before the expiry of the term" is null and void.

We defer making any order as to costs pending consideration of written submissions on that matter to be submitted by counsel for both parties.

Order accordingly.

Solicitors: *Mahinder & Co.; Datuk Morris Edgar & Co.*

CHONG AH CHAI & ORS. v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Syed Othman & Ibrahim Manan F.JJ.) June 8, 1979]

[Kuala Lumpur — Federal Court Criminal Reference No. 3 of 1978]

Criminal Law and Procedure — Attempted theft of a cement mixer — Cement mixer not produced at trial — Whether accused can be convicted of offence.

Penal Code, ss. 379 & 511 — Theft — Attempted theft of cement mixer.

In this case the accused persons were accused of attempted theft of a cement mixer. At the trial before the Magistrate's Court the cement mixer was not produced, but the prosecution stated that it could be viewed at the site if necessary as it was too heavy to carry to the court. There was evidence to show that the cement mixer had been meddled with and the cement mixer was seen by the investigation officer in the presence of the accused. Photographs were also taken of the cement mixer and these were produced in court. The accused were convicted and their appeal to the High Court was dismissed. On the application of the accused, the High Court referred the following question for the determination of the Federal Court — "Whether an accused person charged for an offence of theft or attempted theft of property can be found guilty and convicted in law where the prosecution has not produced the said property at the trial or marked it as an exhibit."

Held: the question referred to the court must be answered in the affirmative. It could not be said in this case that there was any material break or gap in the chain of evidence

regarding the identity of the subject-matter of the offences and therefore the accused were rightly convicted of the offence.

FEDERAL COURT.

Manjeet Singh for the 1st applicant.

Dulip Singh for applicants Nos. 2-4.

Mah Keng Kwai (Deputy Public Prosecutor) for the respondent.

Ibrahim Manan F.J. (delivering the judgment of the Court): The four applicants were jointly charged in the Magistrate's Court at Seremban that they on October 22, 1975 at about 11.30 p.m. at Batu 1½ Jalan Rasah, Seremban, in furtherance of their common intention, attempted to commit theft of a cement mixer engine, an offence punishable under sections 379 and 511 read with section 34 of the Penal Code.

The evidence adduced by the prosecution was that on the material date and at the material time and place, a construction worker employed by a building contractor was returning to his "Kongsi" at the building site when he saw some figures of persons near a cement mixer which belonged to his employer. On coming closer, he saw two persons squatting and meddling with the cement mixer and another two persons standing about 4 to 6 feet away. He summoned the help of three of his co-workers and together they surrounded and apprehended those 4 persons who were the applicants. The worker then went to inform the contractor whilst his other co-workers remained behind to guard over the applicants. When the contractor came to the site he saw the applicants seated under a shed guarded by his employees. He demanded for and took possession of their identity cards. He examined his cement mixer and found that some bolts and screws securing the engine of the cement mixer had been removed. Lying nearby on the ground he found two bolts and four screws, five spanners and a hacksaw. He then left the site and went to the Seremban Police Station where he lodged a report. After lodging the report and handing over the applicants' identity cards to the investigation officer he accompanied him back to the site. When the investigation officer came to the site the applicants were handed over to him and he arrested them. He saw 3 cement mixers. He examined the relevant cement-mixer which was the middle one and he found that 2 bolts had been removed. He instructed the police photographer to take two photographs of the cement mixer, one showing position of the bolts in relation to the cement mixer and the other showing close-up of the cement mixer.

At the close of the prosecution case learned counsel for the applicants submitted that there was no case for them to answer. Several grounds were submitted, one of which was that the cement mixer, the subject matter of the charge, was not produced in court for identification by the prosecution witnesses. The learned Magistrate, however, did not agree with him and called for all the applicants to enter their defence. All the applicants elected to remain silent and did not call any witnesses. The learned Magistrate therefore found each and every one of the applicants guilty of the offence charged and convicted them.

The applicants appealed to the High Court against the conviction. There were several grounds of appeal advanced by learned counsel but the main ground on which he strenuously argued was the fact that the cement mixer was not produced in court nor was it marked as an exhibit. Ajaib Singh J. dismissed the appeal.

On the application of the applicants the learned judge referred the following question of law of public interest for the determination of this court under section 66(1) of the Courts of Judicature Act, 1964:

"Whether an accused person charged for an offence of theft or attempted theft of property can be found guilty and convicted in law where the prosecution has not produced the said property at the trial nor marked it as an exhibit."

It was argued before us by learned counsel for the applicants that as the cement mixer was in the possession of the prosecution no *prima facie* case had been proved when they failed to produce the cement mixer at the trial or to have it marked as an exhibit — it would be different if the subject matter of the offence was no longer in possession of the prosecution e.g. if a stolen apple had been eaten. It was also argued that as the two photographs had not been identified by the owner of the cement mixer there was a break or gap in the chain of evidence as to the identity of the cement mixer. With respect we did not agree with them and we accordingly answered the question in the affirmative. We now give our reasons.

The record of the proceedings in the magistrate's court showed that the question of production of the cement mixer was discussed and the prosecution had said that it could be viewed at the site if necessary as it was heavy to carry it to court. Nothing came out of this and it was not viewed at the site nor was it marked as an exhibit. As such, we did not think that the omission to produce the cement mixer at the trial or to mark it as a exhibit was fatal to the prosecution case. There was the clear evidence of the worker and the owner that the cement mixer had been meddled with and that the bolts and screws which had been removed from the cement mixer were lying nearby. The investigation officer who came to the site with the owner saw the same cement mixer in the presence of everyone concerned including the applicants. In our view the evidence up to this point should have been enough to support the prosecution case and the photographs which were in fact taken on the investigation officer's instruction at the time were merely additional supportive evidence regarding it. It was true that the owner was not asked to identify the two photographs but there could be no doubt that the cement mixer shown in the two photographs was the same cement mixer belonging to him, the engine of which the applicants had attempted to steal. It could not therefore be said that there was any material break or gap in the chain of evidence regarding the identity of the subject matter of the offence.

Answer in the affirmative.